

UNITED STATES BANKRUPTCY COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA  
DURHAM DIVISION

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In Re:

**Timothy Higgins And Teresa Higgins**

Case No. 10-81683

Chapter 13

Social Security No. xxx-xx-7220 and xxx-xx-9650

Address: 1515 Victory Lane, Hillsborough, NC 27278-

Debtors

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**MOTION TO MODIFY PLAN**

**NOW COME the Debtors**, by and through counsel undersigned, who move, under authority of 11 U.S.C. § 1329, to modify the Chapter 13 plan in this case, and in support hereof, the Debtors show unto this Court the following:

1. This case was filed on September 17, 2010, with the Chapter 13 plan being subsequently confirmed on December 14, 2010.
2. The Debtors propose to modify the Chapter 13 plan in this case in the following respects:  
  
From:           \$1,437.00 per month.  
  
To:             \$1,437.00 per month through April 2011, followed thereafter by \$1,147.00 per month, starting in July 2011.
3. In addition, the Debtors request a "waiver" to move their Chapter 13 plan payment delinquency to the end of the Chapter 13 plan for payment. As a condition of receiving these waivers the Debtors agree that, should any subsequent payments be more than thirty (30) days delinquent within the twelve (12) months following the entry of this Order, that the Debtors' case may be dismissed without further hearing by the Court. The Debtors agree that any Order allowing such waivers shall not be *res judicata* as to timely Motions for Relief filed by secured creditors in this case.
4. The changed circumstances that justify the proposed modification are as follows:
  - a. Mr. Higgins lost his job in February 2011 and is currently drawing only unemployment benefits.
  - b. Mrs. Higgins has not been able to find employment.
  - c. Mrs. Higgins has been forced to defer medical care.

5. An Amended Schedule I for the Debtors is attached hereto and is incorporated hereto by reference.
6. An Amended Schedule J for the Debtors is attached hereto and is incorporated by reference.
7. The proposed modification conforms to the standards of confirmation set out in 11 U.S.C. §§ 1322 and 1325. This modification is feasible because of the following changes, as detailed on the attached Chapter 13 Worksheet:
  - a. Change in length of plan.
  - b. Filed claims different from schedules.
  - c. Change in the equal monthly payments to Wells Fargo from \$110.67 to \$121.87.

**Appended Application for an Additional Attorney Fee**

8. Counsel for the Debtors further applies herein, in accordance with Bankruptcy Rule 2016(b), for approval an attorney fee in the amount of \$250.00 to pay for the reasonable value of the services rendered, and to be rendered, with respect to this motion to modify.

WHEREFORE, the Debtors pray that this Court grant their Motion, and modify the Chapter 13 plan accordingly. In addition, counsel undersigned requests that this Court approve a fee in the amount of \$250.00 to compensate undersigned for the services rendered or to be rendered with respect to this motion, said fee to be paid by the Chapter 13 Trustee as an administrative claim in this case.

Dated: June 14, 2011

**LAW OFFICES OF JOHN T. ORCUTT, P.C.**

/s Edward C. Boltz  
Edward C. Boltz  
North Carolina State Bar No.: 23003  
6616-203 Six Forks Road  
Raleigh, N.C. 27615  
(919) 847-9750

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In Re:

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**CERTIFICATE OF SERVICE**

I, Dawn DeFrangé, certify under penalty of perjury that I am, and at all times hereinafter mentioned was, more than eighteen (18) years of age and that on June 14, 2011, I served copies of the foregoing **MOTION TO MODIFY PLAN** electronically, or when unavailable, by regular first-class U.S. mail, addressed to the following parties:

Richard M. Hutson, II  
Chapter 13 Trustee  
Michael West  
U.S. Bankruptcy Administrator

Timothy Higgins And Teresa Higgins  
1515 Victory Lane,  
Hillsborough, NC 27278-

All creditors with duly filed claims as listed on the attached Report of Claims Filed at the addresses listed thereon.

/s Dawn DeFrangé  
Dawn DeFrangé

In re **Timothy Scott Higgins  
Teresa Elliott Higgins**Case No. **10-81683**

Debtor(s)

**SCHEDULE I - CURRENT INCOME OF INDIVIDUAL DEBTOR(S) - AMENDED**

The column labeled "Spouse" must be completed in all cases filed by joint debtors and by every married debtor, whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed. Do not state the name of any minor child. The average monthly income calculated on this form may differ from the current monthly income calculated on Form 22A, 22B, or 22C.

Debtor's Marital Status: <b>Married</b>	DEPENDENTS OF DEBTOR AND SPOUSE	
	RELATIONSHIP(S): <b>None.</b>	AGE(S):
Employment:	DEBTOR	SPOUSE
Occupation	<b>Unemployed</b>	
Name of Employer		<b>Unemployed</b>
How long employed	<b>2/2011</b>	
Address of Employer		

INCOME: (Estimate of average or projected monthly income at time case filed)

1. Monthly gross wages, salary, and commissions (Prorate if not paid monthly)  
2. Estimate monthly overtime

DEBTOR	SPOUSE
\$ <b>0.00</b>	\$ <b>0.00</b>
\$ <b>0.00</b>	\$ <b>0.00</b>
<b>\$ 0.00</b>	<b>\$ 0.00</b>

## 3. SUBTOTAL

## 4. LESS PAYROLL DEDUCTIONS

- a. Payroll taxes and social security  
b. Insurance  
c. Union dues  
d. Other (Specify):

\$ <b>0.00</b>	\$ <b>0.00</b>
\$ <b>0.00</b>	\$ <b>0.00</b>
\$ <b>0.00</b>	\$ <b>0.00</b>
\$ <b>0.00</b>	\$ <b>0.00</b>
\$ <b>0.00</b>	\$ <b>0.00</b>

## 5. SUBTOTAL OF PAYROLL DEDUCTIONS

<b>\$ 0.00</b>	<b>\$ 0.00</b>
<b>\$ 0.00</b>	<b>\$ 0.00</b>

## 6. TOTAL NET MONTHLY TAKE HOME PAY

7. Regular income from operation of business or profession or farm (Attach detailed statement)  
8. Income from real property  
9. Interest and dividends  
10. Alimony, maintenance or support payments payable to the debtor for the debtor's use or that of dependents listed above  
11. Social security or government assistance  
(Specify): **Unemployment**

\$ <b>0.00</b>	\$ <b>0.00</b>
\$ <b>0.00</b>	\$ <b>0.00</b>
\$ <b>0.00</b>	\$ <b>0.00</b>
\$ <b>0.00</b>	\$ <b>0.00</b>
\$ <b>1,733.33</b>	\$ <b>0.00</b>
\$ <b>0.00</b>	\$ <b>0.00</b>
\$ <b>0.00</b>	\$ <b>0.00</b>

## 12. Pension or retirement income

## 13. Other monthly income

- (Specify): **Food Stamp**  
**Babysitting**

\$ <b>138.00</b>	\$ <b>0.00</b>
\$ <b>216.67</b>	\$ <b>0.00</b>

## 14. SUBTOTAL OF LINES 7 THROUGH 13

<b>\$ 2,088.00</b>	<b>\$ 0.00</b>
<b>\$ 2,088.00</b>	<b>\$ 0.00</b>

## 15. AVERAGE MONTHLY INCOME (Add amounts shown on lines 6 and 14)

## 16. COMBINED AVERAGE MONTHLY INCOME: (Combine column totals from line 15)

<b>\$ 2,088.00</b>
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(Report also on Summary of Schedules and, if applicable, on  
Statistical Summary of Certain Liabilities and Related Data)

17. Describe any increase or decrease in income reasonably anticipated to occur within the year following the filing of this document:

**None Anticipated**

In re **Timothy Scott Higgins**  
**Teresa Elliott Higgins**

Debtor(s)

Case No. **10-81683**

## SCHEDULE J - CURRENT EXPENDITURES OF INDIVIDUAL DEBTOR(S) - AMENDED

Complete this schedule by estimating the average or projected monthly expenses of the debtor and the debtor's family at time case filed. Prorate any payments made bi-weekly, quarterly, semi-annually, or annually to show monthly rate. The average monthly expenses calculated on this form may differ from the deductions from income allowed on Form 22A or 22C.

☐ Check this box if a joint petition is filed and debtor's spouse maintains a separate household. Complete a separate schedule of expenditures labeled "Spouse."

1. Rent or home mortgage payment (include lot rented for mobile home)		\$ <u>0.00</u>
a. Are real estate taxes included?	Yes <u>    </u> No <u>X</u>	
b. Is property insurance included?	Yes <u>    </u> No <u>X</u>	
2. Utilities:		
a. Electricity and heating fuel		\$ <u>120.00</u>
b. Water and sewer		\$ <u>50.00</u>
c. Telephone		\$ <u>0.00</u>
d. Other <b>See Detailed Expense Attachment</b>		\$ <u>140.00</u>
3. Home maintenance (repairs and upkeep)		\$ <u>0.00</u>
4. Food		\$ <u>279.00</u>
5. Clothing		\$ <u>0.00</u>
6. Laundry and dry cleaning		\$ <u>0.00</u>
7. Medical and dental expenses		\$ <u>0.00</u>
8. Transportation (not including car payments)		\$ <u>177.00</u>
9. Recreation, clubs and entertainment, newspapers, magazines, etc.		\$ <u>0.00</u>
10. Charitable contributions		\$ <u>0.00</u>
11. Insurance (not deducted from wages or included in home mortgage payments)		
a. Homeowner's or renter's		\$ <u>0.00</u>
b. Life		\$ <u>80.00</u>
c. Health		\$ <u>0.00</u>
d. Auto		\$ <u>85.00</u>
e. Other		\$ <u>0.00</u>
12. Taxes (not deducted from wages or included in home mortgage payments)		
(Specify) <b>Personal Property Taxes</b>		\$ <u>10.00</u>
13. Installment payments: (In chapter 11, 12, and 13 cases, do not list payments to be included in the plan)		
a. Auto		\$ <u>0.00</u>
b. Other		\$ <u>0.00</u>
c. Other		\$ <u>0.00</u>
14. Alimony, maintenance, and support paid to others		\$ <u>0.00</u>
15. Payments for support of additional dependents not living at your home		\$ <u>0.00</u>
16. Regular expenses from operation of business, profession, or farm (attach detailed statement)		\$ <u>0.00</u>
17. Other <b>Chapter 13 Plan Payment</b>		\$ <u>1,147.00</u>
Other		\$ <u>0.00</u>

18. AVERAGE MONTHLY EXPENSES (Total lines 1-17. Report also on Summary of Schedules and, if applicable, on the Statistical Summary of Certain Liabilities and Related Data.)

\$ 2,088.00

19. Describe any increase or decrease in expenditures reasonably anticipated to occur within the year following the filing of this document:

**None Anticipated**

### 20. STATEMENT OF MONTHLY NET INCOME

a. Average monthly income from Line 15 of Schedule I		\$ <u>2,088.00</u>
b. Average monthly expenses from Line 18 above		\$ <u>2,088.00</u>
c. Monthly net income (a. minus b.)		\$ <u>0.00</u>

In re **Timothy Scott Higgins**  
**Teresa Elliott Higgins**

Case No. **10-81683**

Debtor(s)

**SCHEDULE J - CURRENT EXPENDITURES OF INDIVIDUAL DEBTOR(S) - AMENDED**  
**Detailed Expense Attachment**

**Other Utility Expenditures:**

Cell Phone	\$	80.00
Cable	\$	60.00
<b>Total Other Utility Expenditures</b>	<b>\$</b>	<b>140.00</b>

# **CH. 13 PLAN - DEBTS SHEET** (MIDDLE DISTRICT - DESARDI VERSION)

Date: **8/18/10**  
Lastname-SS#: **Higgins-7220**

## **RETAIN COLLATERAL & PAY DIRECT OUTSIDE PLAN**

Creditor Name	Sch D #	Description of Collateral

## **SURRENDER COLLATERAL**

Creditor Name	Description of Collateral

## **ARREARAGE CLAIMS**

Creditor Name	Sch D #	Arrearage Amount	(See f)
			**
			**
			**
			**
			**
Bank of America		\$6,182	**
			**
			**
			**

## **REJECTED EXECUTORY CONTRACTS/LEASES**

Creditor Name	Description of Collateral

## **LTD - DOT ON PRINCIPAL RESIDENCE & OTHER LONG TERM DEBTS**

Creditor Name	Sch D #	Monthly Contract Amount	Int. Rate	Adequate Protection	Minimum Equal Payment	Description of Collateral
Bank of America		\$820	N/A	n/a	\$820.00	Residence
			N/A	n/a		
			N/A	n/a		
			N/A	n/a		

## **STD - SECURED DEBTS @ FMV**

Creditor Name	Sch D #	FMV	Int. Rate	Adequate Protection	Minimum Equal Payment	Description of Collateral
			5.00			
			5.00			
			5.00			
			5.00			

## **STD - SECURED DEBTS @ 100%**

Creditor Name	Sch D #	Payoff Amount	Int. Rate	Adequate Protection	Minimum Equal Payment	Description of Collateral
Wells Fargo - equity		\$5,659	5.00	\$46	\$121.87	2004 Ford Mustang
			5.00			
			5.00			
			5.00			
			5.00			

## **ATTORNEY FEE (Unpaid part)**

Amount
Law Offices of John T. Orcutt, P.C.
\$250

## **SECURED TAXES**

Secured Amt
IRS Tax Liens
Real Property Taxes on Retained Realty
\$1,232

## **UNSECURED PRIORITY DEBTS**

Amount
IRS Taxes
State Taxes
Personal Property Taxes
Alimony or Child Support Arrearage

## **CO-SIGN PROTECT (Pay 100%)**

Int. %	Pay off Amt
All Co-Sign Protect Debts (See*)	

## **GENERAL NON-PRIORITY UNSECURED**

Amount**
DMI= None(\$0)
None(\$0)

## **PROPOSED CHAPTER 13 PLAN PAYMENT**

\$ **\$1,147** per month for **54** months, then

\$ **N/A** per month for **N/A** months.

Adequate Protection Payment Period: **months.**

Sch D # = The number of the secured debt as listed on Schedule D.

Adequate Protection = Monthly 'Adequate Protection' payment amt.

f = May include up to 2 post-petition payments.

\* Co-sign protect on all debts so designated on the filed schedules.

\*\* = Greater of DMI x ACP or EAE (Page 4 of 4)

Ch13Plan\_MD\_(DeSardi Version 1/12/10) © LOJTO

## **Other Miscellaneous Provisions**

Plan to allow for 3 "waivers". Interest on EAE at fed. judgment rate